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BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Annual Reports for the Year Ended December 31, 2001, Filed by Alternative Telecommunications Utility-Telecommunications Resellers on a Confidential Basis

RE: PSC Control Nos. 19964, 19965, 19971, 19972, 20003, 20005, 20006, 20007, 20136, 23769, 23770, 23785, and 23786

CONFIDENTIALITY DETERMINATION

On April 1 and 10, June 14, and August 9, 2002, TTI National, Inc. ("TTI") (utility 7039) submitted written applications seeking confidential treatment of certain information in its 2001 Alternative Telecommunications Utility-Telecommunications Reseller ("RES") annual report. The information is filed under document PSC control numbers 19971, 19972, 20005, 20006, and 23785.¹

On April 1 and 10, June 14, and August 9, 2002, Telecom USA (utility 7101) submitted written applications seeking confidential treatment of certain information in its 2001 RES annual report. The information is filed under document PSC control numbers 19964, 19965, 20003, 20007, and 23786.²

On April 1 and 11, 2002, ACC National Long Distance Corporation ("ACC") (utility 7905) submitted written applications seeking confidential treatment of certain information in its 2001 RES annual report. The information is filed under document PSC control numbers 20136, 23769, and 23770.³

¹ Confidentiality Request Nos. 19971 (April 1, 2002), 19972 and 23785 (April 10, 2002), 20005 (June 14, 2002), and 20006 (August 9, 2002).

² Confidentiality Request Nos. 19964 (April 1, 2002), 19965 and 23786 (April 10, 2002), 20003 (June 14, 2002), and 20007 (August 9, 2002).

³ Confidentiality Request Nos. 20136 (April 1, 2002) and 23769 and 23770 (April 11, 2002).

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In particular, the three companies seek confidential treatment for the Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes; Cost of plant in Wisconsin utilized by the reseller for provision of telecommunications services in Wisconsin; Cost basis (including capital leases) of transmission facilities (excluding switches) in Wisconsin, including wire, cable, fiber optics or radio, and associated electronics owned, operated, managed or controlled by the telecommunications reseller, if in excess of \$400,000 as of December 31, 2001; and gross operating revenues, minutes of use and average number of customers generated by the provision of intrastate Wisconsin telecommunications services⁴ information on lines 1-5, 6, 7, and 8-10, respectively, on p. 6 of their respective 2001 RES annual reports. For the reasons stated herein, confidential treatment for the above specifically identified data is **DENIED**.

The Public Service Commission ("Commission") has the authority to compel the submittal of this information pursuant to Wis. Stat. § 196.25. This confidentiality determination is made pursuant to Wis. Admin. Code § PSC 2.12.

Background

On May 30, 2001, the Commission issued a Confidentiality Determination⁵ concerning the 2000 RES annual report filings.⁶ In its consolidated confidentiality determination dated March 14, 2002, the Commission found it reasonable to apply those findings of its Confidentiality Determination to 2001 annual report filings.

⁴ The revenue data contained in this item is used to determine assessable revenues for intrastate universal service fund ("USF") assessment purposes.

⁵ On July 18, 2001, the Commission issued an Order Denying Reconsideration, Reopening, and Stay concerning this matter. Subsequent to the issuance of the Commission's July 18 order, five Alternative Telecommunications Utility-Telecommunications Resellers ("resellers"), including TTI, Telecom USA, and ACC, obtained a court-ordered stay permitting continued confidential treatment of selected portions of their 2000 filings.

⁶ The 2001 RES annual report essentially requires information identical to that requested in the 2000 RES annual report.

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TTI, Telecom USA, and ACC are Alternative Telecommunications

Utility-Telecommunications Resellers ("resellers") which are required to file an RES annual report with the Commission. The statutory filing date for the RES annual report covering 2001 calendar year operations was April 1, 2002; in excess of 350 resellers were required to file this report for the 2001 calendar year.⁷

For the 2001 RES annual report program,⁸ which was released on February 15, 2002, the Commission implemented a paperless filing process. The 2001 RES program did not contain padlocks allowing users to file selected information on a confidential basis by locking the padlock next to the protected data, consistent with the Commission's May 30, 2001, Confidentiality Determination. All 2001 RES annual report filings were to be accomplished via e-mail, with an encrypted, zipped attachment containing the exported 2001 annual report information, together with an export status report and edit check listing.

Discussion

On various dates ranging from April 1 to August 9, 2002, TTI, Telecom USA, and ACC manually filed their 2001 RES annual reports, requesting confidential treatment of the Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes; Cost of plant in Wisconsin utilized by the reseller for provision of telecommunications services in Wisconsin; Cost basis (including capital leases) of transmission facilities (excluding switches) in Wisconsin, including wire, cable, fiber optics or radio, and associated electronics owned, operated, managed or controlled by the telecommunications reseller, if in excess of \$400,000 as

⁷ Approximately 275 resellers have actually filed the 2001 RES annual report with the Commission.

⁸ The 2001 RES annual report program is actually a subset of the 2001 Other Telecommunications Annual Report Program. The 2001 Other Telecommunications Annual Report Program is used by five different categories of telecommunications entities to file annual reports with the Commission.

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of December 31, 2001; and gross operating revenues, minutes of use and average number of customers generated by the provision of intrastate Wisconsin telecommunications services information contained on the Assessable Revenues schedule on p. 6, over and above that provided for in the 2001 RES annual report program. The three companies' filings contained confidential hard copy pages, a confidential diskette containing annual report program files, and a complete public version of the 2001 report, the latter which is currently available on the Commission's web page.

TTI and Telecom USA claim that the information sought to be protected is sensitive, competitively-useful, proprietary, and trade secret business information. In addition, both companies posit that the information at issue could reveal each company's strategic market position, entry strategy, ability to provide services in particular areas of the state, and even the quality of and limitations on those services and offerings. The companies argue that if the Commission makes the p. 6 information publicly available, competitors could draw accurate conclusions regarding how TTI and Telecom USA serve their customers, each company's plans for entering the market and bringing new products to its existing markets, and their success rates in winning and retaining new customers based upon those business decisions. Each company believes that competitors could use the information to respond to their market-gaining efforts by converting the revenue information into market share data and target their winback efforts in those areas and to those customers where TTI or Telecom USA is shown to be gaining ground. The companies claim that public release of the p. 6 information could cause competition to suffer in the state. The companies also note that only a limited number of employees currently have knowledge of the requested confidential information, stating that absence of confidential

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handling by the Commission would significantly increase that number. Finally, TTI and Telecom USA state that there have rarely, if ever, been requests from the public at large to examine the p. 6 information at issue.

In ACC's notarized affidavits⁹ accompanying the filings, it states that the p. 6 information is confidential and proprietary and disclosure of the information would allow competitors to use it to their competitive advantage and to the detriment of the company. Specifically, the company posits that competitors could derive ACC's market share, assess the relative efficacy of the company's marketing and strategic business plans in Wisconsin, gain insight into ACC's economic and business planning information, and make changes to their own business and marketing plans based on an analysis of the company's confidentially-filed information. ACC also claims that the information constitutes trade secrets under Wisconsin law and should be protected from public disclosure pursuant to Wis. Stat. §§ 19.36(5), 134.90, and 196.14. The company notes that this information is neither generally available to the public nor generally known outside the company. ACC states that it maintains internal procedures to protect the information and requests confidential treatment in other regulatory filings.

In issuing its March 14, 2002, consolidated confidentiality determination applying to all resellers, the Commission balanced the concerns of the parties submitting confidential commercial or financial information and that of the interest of the public in accessing that

⁹ ACC's notarized affidavits do not expressly reference p. 7, Telephone Numbers for Potential Customers and Changes During the Year. However, p. 7 is attached to the confidentiality request forms pertaining to the hard copy filings. Therefore, the Commission must address this item. It should be noted that the public hard copy version of ACC's 2001 RES annual report provided by it for posting on the Commission's web page contains p. 7 with all details shown; therefore, p. 7 information is already available on a public basis and confidentiality for p. 7 is denied on that basis without addressing the merits of whether the information on that particular page should be accorded confidential treatment. If the Commission were to go to the merits as to whether this information is confidential and/or a trade secret, the Commission would deny such treatment since it believes that telephone numbers for potential customers to contact the company would not cause harm to the company, but rather help it, if available in a public forum.

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information. This careful balancing of competing interests affects both the competitive nature of the telecommunications industry and the performance of the Commission's public responsibilities. As the telecommunications industry becomes increasingly competitive, companies increasingly assert that the information they provide to the Commission is competitively sensitive.

TTI, Telecom USA, and ACC assert that the information provided, if released, would aid a competitor. However, it is difficult to reconcile confidential treatment of annual reports for these three companies with annual reports of the other 250-plus resellers that have not sought the same.

Confidential treatment of Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes; Cost of plant in Wisconsin utilized by the reseller for provision of telecommunications services in Wisconsin; Cost basis (including capital leases) of transmission facilities (excluding switches) in Wisconsin, including wire, cable, fiber optics or radio, and associated electronics owned, operated, managed or controlled by the telecommunications reseller, if in excess of \$400,000 as of December 31, 2001; and gross operating revenues, minutes of use and average number of customers generated by the provision of intrastate Wisconsin telecommunications services information in TTI, Telecom USA, and ACC's 2001 RES annual reports is **denied**. Trade secret status for such information under Wis. Stat. §§ 19.36(5) and 134.90(1)(c), as claimed by the three companies, is likewise **denied**.

The Commission reiterates the provisions and reasoning contained in its March 14, 2002, confidentiality determination concerning the 2001 RES annual report, in which it denied provisional confidential treatment to all information in the to-be-filed 2001 RES annual reports.

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Confidential treatment for this information was denied because this information would not aid a competitor of a public utility.

The Commission is not persuaded that the statewide revenue and other information cited by TTI, Telecom USA, and ACC in their filings warrant provisional confidential treatment. All three companies have failed to provide any specific, convincing evidence, beyond mere allegation, that disclosure of the information at issue truly enables competitors to harm their respective businesses. The Commission does not believe that the statewide revenue and other information at issue is specific enough to allow competitors to target strategic plans to certain market areas, as claimed by TTI, Telecom USA, and ACC.¹⁰ Finally, the Commission does not believe that Wisconsin revenue or other information shown on p. 6 of the 2001 RES annual report qualifies as a trade secret under Wis. Stat. §§ 19.36(5) or 134.90(1)(c).

Pursuant to its jurisdiction under Wis. Stat. §§ 196.02(1), 196.14, and other provisions of Wis. Stat. ch. 196 and Wis. Stat. §§ 19.32-.39, as may be pertinent hereto, the Commission denies confidential treatment to TTI, Telecom USA, and ACC's Calculation of Assessable Revenues for Remainder and Telephone Relay Assessment Purposes; Cost of plant in Wisconsin utilized by the reseller for provision of telecommunications services in Wisconsin; Cost basis

¹⁰ Additionally, the Commission notes that such revenue information at issue was similarly disallowed confidential treatment in its March 14, 2002, confidentiality determinations concerning the following 2001 annual reports: Interexchange Carriers and Other Selected Alternative Telecommunications Utility-Other Telecommunications Provider Entities ("ARW"); Commercial Mobile Radio Service Provider ("CMR") (with respect to Wisconsin Gross Intrastate Operating Telecommunications Service Revenue); and Alternative Telecommunications Utility-Other Telecommunications Provider ("OTH"). End-of-year plant balances and average number of Wisconsin-based total subscribers (similar to the cost of plant and average number of customers information, respectively, on p. 6 of the 2001 RES annual report) were likewise denied confidential treatment in the Commission's March 14, 2002, confidentiality determination concerning the 2001 OTH annual report. Total local, total toll, and total local and toll minutes of use per month information (similar to the yearly total minutes of use generated by the provision of intrastate Wisconsin telecommunications services information on p. 6 of the 2001 RES annual report) was likewise denied confidential treatment in the Commission's February 5, 2002, confidentiality determination concerning the 2001 incumbent local exchange carrier (LEC) annual report. The Commission is currently addressing requests from two ARW entities, three CMR entities, two LEC entities, and 11 OTH entities for confidential status for items contained in such annual reports.

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(including capital leases) of transmission facilities (excluding switches) in Wisconsin, including wire, cable, fiber optics or radio, and associated electronics owned, operated, managed or controlled by the telecommunications reseller, if in excess of \$400,000 as of December 31, 2001; and gross operating revenues, minutes of use and average number of customers generated by the provision of intrastate Wisconsin telecommunications services information contained in their 2001 RES annual reports.


This confidentiality determination is not a final determination under the Public Records law; it is the Commission's decision for purposes of managing its files. This confidentiality determination does not prejudice the right of any person to submit a public records request to inspect the contents of the filings subject to this determination.

The information for which confidential treatment is denied shall be open to public scrutiny 40 days after the issuance of this order. TTI, Telecom USA, and ACC shall provide the Commission with a revised complete public version complying with this determination no later than three business days before the public disclosure date.¹¹ Absent such filings, the Commission will proceed to make available revised public versions based on this confidentiality determination.

This order is effective upon mailing.

Dated at Madison, Wisconsin, 21 October 2002

For the Commission:



David Albino, Administrator
Telecommunications Division

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¹¹ In the alternative, any (or all) company(ies) may elect to satisfy these requirements by electronically re-filing its 2001 annual report using the electronic filing capabilities contained in the 2001 RES annual report program.